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possessed of an hereditary and alienable office known as the Alguacil Mayor of Havana, carrying with it an exclusive franchise to slaughter cattle in Havana, brought suit against the military governor of Cuba for damages suffered by reason of his order abolishing this office. On demurrer to the complaint, the court held that this franchise was private property and within the pledge given in the President's proclamation of July 13, 1898, and later by the Treaty of Paris. *Countess of Buena Vista v. Maj. Gen. Brooke* (1905) 32 N. Y. Law J. 1903.

Under the rule that the will of the conqueror constitutes the law of the conquered, a military governor has been held exempt from personal liability for acts done in violation of private property rights. *Elphinstone v. Bedruchund* (1830) 1 Knapp 316; *Dow v. Johnson* (1879) 100 U. S. 158. But the decided tendency in this country is to limit the power of a military commander who seizes the property of a citizen of the United States, even in time of war, to the strict requirements of the exigency. Orders given in violation of an officer's limitations are absolutely void. *Planters' Bank v. Union Bank* (1872) 16 Wall. 483; *Raymond v. Thomas* (1875) 91 U. S. 712. And the officer is liable in tort for damages suffered by a citizen in consequence. *Mitchell v. Harmony* (1851) 13 How. 115. It would follow from this that when the military government ceases to be an instrument to promote actual warfare and devotes itself instead to civil administration, greater limitations attach. There would therefore seem to be good authority for holding the present defendant liable in tort when it is shown that his order violated property rights of the plaintiff which were within the protection guaranteed to the citizens of Cuba by the United States.

The office of alguacil mayor was terminated when the sovereignty of Spain in the island was superseded by that of the United States. But the franchise as a property right had been separated from the office by an edict of the Governor General in 1878. As such it constituted a monopoly under the common law, and which would be constitutional in this country only under an exercise of the police power. *The Slaughter House Cases* (1872) 16 Wall. 36. But by the Treaty of Paris and the President's Proclamation of July 13th, 1898, the private law of the island was to continue in force. Under the Spanish Civil Code, Art. 336, the franchise in question was a legitimate form of private property, and under Art. 349, indestructible without compensation. There seems to be no question that the franchise was within the contemplation of the treaty and that the defendant was properly held liable.

UNAUTHORIZED OPERATIONS BY SURGEONS.—A recent case in Illinois is of marked interest, both professional and lay. The plaintiff had been suffering from epilepsy and went to consult the defendant, a surgeon. He found that a major and a minor operation were desirable, but informed the patient of the necessity of only the minor one. She consented to that; it was performed, and she left the hospital. She later returned to have this minor operation repeated. During her first stay at the hospital the surgeon found her in a highly nervous and irritable condition which he described as insane, and on her return he considered her judgment so unbalanced that she could not

properly decide as to the major operation ; he knew that she would not consent if asked, so while she was under anæsthetics for the minor operation he also performed the more serious one. He acted with absolute good faith and used proper skill, but the court found that the patient was sane enough to be capable of consenting and it held the surgeon liable in exemplary damages. *Pratt v. Davis* (Ill. 1905) 37 Chic. Legal News 213.

It is almost universally true that motive is an indifferent element in an action for trespass, but in certain cases, as inevitable accident, the better authorities agree that an injury to the person will not be actionable because the act is morally colorless. Holmes, *The Common Law*; Pollock on *Torts* 116. It is not actionable if one remove an unconscious person from a place of danger, Bigelow on *Torts* § 377, nor if a competent surgeon operate on him to save his life, if that be necessary. Pollock on *Torts* 146. These are justified as acts of charity or necessity; but if a friend greet another by slapping him on the back, or touch him to attract his attention, there will be no action even though an injury follow. Per Lord HARDWICKE in *Williams v. Jones* (1736) Hard. 301. In these cases motive would seem to be the determining factor. The line between the principal case and those of "charity and necessity" seems difficult to draw, and it would seem that the motive of the defendant should not be completely disregarded. The decision of the court is based on the absence of consent ; but punishment by a parent, private defense and prevention of a felony, are cases where an assault may be justified although consent is expressly withheld, Pollock on *Torts* 146, and this would seem to be an uncertain test.

The principal case seems to be the first decided on the point. In an unreported case in England, *Beatty v. Cullingworth*, commented on in 41 *Solicitor's Jour.* 58 and in 44 *Cent. Law Jour.* 153, the verdict seems to have turned on the scope of the patient's consent, and *Wood v. Wyeth* (1903) 80 N. Y. App. Div. 628, was an action for malpractice, though in a dissenting opinion WOODWARD, J., discusses the authority of a surgeon in a charity hospital. The scope of the surgeon's authority would seem to be the question most likely to arise ; in *Janney v. Housekeeper* (1888) 70 Md. 162, it is held that it cannot be abridged by the husband if the wife consents. Interesting questions are suggested by the decision in the principal case, though it would seem that most of them might be answered by established rules. Were an operation necessary to save life, refusal to consent might be interpreted as suicide, and an operation justified as preventing a felony. Similarly, an operation to save a limb in spite of consent might be justified as preventing mayhem, and in minor disorders the question would seem to be whether refusal to consent would amount to an attempt to commit a felony. Some of these questions are likely to come before the courts as a consequence of the principal case.